**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**FARAD CONTINUATION SHEET**

**1. C.A.NO.664/2006 IN F.A.ST.NO.3347/2006**
**2. C.A.NO.987/2006 IN F.A.ST.NO.4003/2006**
**3. C.A.NO.991/2006 IN F.A.ST.NO.4019/2006**
**4. C.A.NO.5048/2005 IN F.A.ST.NO.24170/2005**
**5. C.A.NO.5049/2005 IN F.A.ST.NO.24163/2005**
**6. C.A.NO.5050/2005 IN F.A.ST.NO.24197/2005**
**7. C.A.NO.5051/2005 IN F.A.ST.NO.24155/2005**
**8. C.A.NO.5060/2005 IN F.A.ST.NO.24146/2005**
**9. C.A.NO.5061/2005 IN F.A.ST.NO.24166/2005**
**10.C.A.NO.5062/2005 IN F.A.ST.NO.24134/2005**
**11.C.A.NO.5889/2005 IN F.A.ST.NO.24159/2005**
**12.C.A.NO.5890/2005 IN F.A.ST.NO.24192/2005**
**13.C.A.NO.5891/2005 IN F.A.ST.NO.24194/2005**
**14.C.A.NO.5894/2005 IN F.A.ST.NO.24248/2005**
**15.C.A.NO.5895/2005 IN F.A.ST.NO.24319/2005**
**16.C.A.NO.5914/2005 IN F.A.ST.NO.24190/2005**
**17.C.A.NO.6042/2005 IN F.A.ST.NO.24568/2005**
**18.C.A.NO.6047/2005 IN F.A.ST.NO.24571/2005**
**19.C.A.NO.6127/2005 IN F.A.ST.NO.26195/2005**
**20.C.A.NO.6137/2005 IN F.A.ST.NO.26998/2005**
**21.C.A.NO.6214/2005 IN F.A.ST.NO.25915/2005**
**22.C.A.NO.6215/2005 IN F.A.ST.NO.25917/2005**
**23.C.A.NO.6216/2005 IN F.A.ST.NO.25919/2005**
**24.C.A.NO.6217/2005 IN F.A.ST.NO.25921/2005**

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| Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders. | Court's or Judge's orders |
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Ms S.V.Sonawane for the Applicants
Mr.M.G.Barve for Respondent Nos.1 and 2.

**CORAM: A.S.OKA,J.**
**DATED: MAY 4, 2006.**

**P.C.:**

1. These are the applications made for condonation of delay in preferring the Appeals by the original claimants in the Claim Petitions under section 110-A of the Motor Vehicles Act,1939. The Claim

Petitions have been dismissed by the

Tribunal.

2. On 29th October 1987 a petrol tanker owned by the Respondent No.1 was proceeding on national highway No.4. The said tanker was being driven in a rash and negligent manner. The driver of the tanker lost control and went on its wrong side. The tanker dashed against a truck. As a result of the impact, the petrol tanker turned turtle. The petrol carried in the said tanker started leaking and caused a huge fire followed by an explosion. The villagers who were merely passing by and who were onlookers got injured in the fire. Many of them died in the hospital. Some of them died on the spot due to burn injuries. Several claim Petitions were filed before the Motor Accident Claims Tribunal at Satara. An application for grant of compensation on account of no fault liability filed by one of the claimants was not granted. The application was not granted on the ground that the explosion could not be said to be an accident arising out of the use of the petrol tanker and there was no connection

whatsoever between the accident involving the tanker and the explosion as the explosion took place few hours after the accident. The matter was ultimately taken to the Apex Court which ruled in favour of the claimant.

3. The claim petitions filed by the different persons were dismissed. In one of the cases where the claim was made by one Yadu Sambhaji More, an Appeal being First Appeal No.149 of 1999 was preferred to this Court. The said Appeal was allowed by the learned Single Judge of this Court by Judgment and Order dated 24th March 2005. I am told that a Special Leave Petition against the said decision is pending in the Supreme Court.

4. The present applications for condonation of delay are by the unsuccessful claimants whose applications were dismissed by the Tribunal.

5. The applications for condonation of delay are opposed by the Advocate for the Respondents on the ground that there is a very long unexplained delay. It is

submitted that the delay of 7 to 8 years cannot be condoned on the basis of averments made in the applications.

6. I have considered the submissions. The case of the Applicants is that due to illiteracy and lack of funds they could not approach this court. By way of illustration a reference is made to the averments made in paragraph Nos.4 and 5 of the Civil Application No.664 of 2006 in First Appeal St.No.3347 of 2006 which read thus:

"4) The Applicant further states that the deceased who was the Applicant was aggrieved by the dismissal of claim application, suffered mental shock. Moreover, after the death of the deceased Applicant, who was former Applicant, the present Applicant being widow had nobody to guide her for further steps. The Applicant is residing in remote village and financially weak. The Applicant had responsibility of educating her two children and was trying to meet both ends by working as an Anganwadi

Volunteer. The Applicant had nobody to help her to come to Mumbai and instruct any lawyer to pursue her appeal. The Applicant after demise of original Applicant, being sole earning person of the house, had no money to pay for Court fees or professional fees of an Advocate. The Applicant who holds small piece of land and ancestral house for residence could not be called as pauper to pursue her claim before the Hon'ble High Court. It is further stated that whatever was earned by the Applicant was utilized for educating her education and upbringing of their children and supporting her livelihood. Under such circumstances, the Applicant could not reach to Mumbai or District place for pursuing further remedy.

5) The Applicant states that the Applicant being poor, rustic lady was absolutely helpless and pursuing further legal remedy was beyond her capacity. It is submitted that the Applicant after death of her husband

started working as Anganwandi Volunteer from which she has saved some amount to pay for the Court fees and now one of her village fellow Shri Yadu Sambhaji More, who persuaded his Appeal is ready and willing to help her in pursuing her appeal. In the facts and circumstances, there is delay of about 7 years and 361 days in preferring the present appeal.

7. Thus, a case made out is that the said Yadu Sambhaji More after succeeding in First Appeal No.149 of 1999 volunteered to help the other claimants who by reason of illiteracy/poverty had not approached this court, after the dismissal of the claim petitions filed by them. The Apex Court in case of Collector, Land Acquisition, Aurangabad and another Vs. Mst.Katiji and others (AIR 1987 S.C. page 1353) held as under :

3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts

to do substantial justice to parties by disposing of matters on merits. The expression 'sufficient cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that:-

i) Ordinarily a litigant does not stand to benefit by lodging an appeal late.

ii) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As

against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

iii) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

iv) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

v) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs

a serious risk.

vi) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. In another decision in case of N.Balkrishnan Vs. M. Krishnamurthy reported in (1998) 7 S.C.C. page 123, the Apex Court held that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The Apex Court further held that the length of delay is no matter and the only criterion is the acceptability of explanation for delay. The Apex Court held that once there is a satisfactory explanation for delay, the delay of a very long range can be condoned.

9. In the present case, it is impossible to say that there was any deliberate delay on the part of the Applicants. The explanation which is offered for

condonation of delay deserves acceptance. Merely because there is some lapse on the part of the Applicants, in the case like this, the doors of the Court cannot be shut to the litigants on the ground that there is a long delay.

10. Considering all these aspects, a case is made out for condonation of delay. Accordingly, delay in preferring the Appeals is condoned.

11. Office is directed to place the Appeals for hearing as to admission.

12. The prayer made by Shri Barve for grant of leave to prefer Appeal is rejected.

**Judge.**